

In re Application of: GUY, John.
Confirmation No: 9515
Application No.: 10/687,677
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REMARKS

Claims 1 and 3-25 were pending in the application at the time the Office Action was mailed. Claims 19 to 25 were withdrawn as being directed to non-elected subject matter. Claims 1 and 3-18 were rejected. No claims were allowed.

By this amendment, claims 7, 8, and 10-15 have been amended and claims 1 and 3-6 have been canceled. No claims have been added. Therefore, claims 7-25 remain pending in the application.

The canceling of claims 1 and 3-6 herein is merely to expedite prosecution and is not to be construed as surrender of any subject matter in the instant application. Applicant reserves the right to pursue the subject matter of the canceled claims in one or more continuing applications.

37 C.F.R. § 1.131 Declaration

The Office Action states that the 37 C.F.R. § 1.131 Declaration filed by Dr. John Guy on October 8, 2007, is ineffective to overcome the Guy 2001 reference and that it is unclear why Applicant cited provisional applications 60/275,288, 60/271,073, and 60/164,363 in the Declaration. Applicant submits that Dr. John Guy is not listed as an inventor on any of these provisional applications and that they were cited in error.

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 3, and 8-16 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Guy (Guy, Gene therapy for nuclear complementation of the G11778A LHON mitochondrial DNA mutation, *Neurology*, (April 24, 2001) Vol. 56, No. 8 Supplement 3, pp. A14. print, Meeting Info.: 53rd Annual Meeting of the American Academy of Neurology. Philadelphia, PA, USA. May 05-11, 2001. American Academy of Neurology. CODEN: NEURAI. ISSN: 0028-3878). Claims 1, 3-6, and 8-18 remain rejected under 35 U.S.C. § 102(e) as being anticipated by Manfredi et al. (Manfredi et al., U.S. Patent Application Publication No. 2004/0072774, Publication date April 15, 2004).

Claims 1 and 3-6 have been canceled. Claim 7, which was not rejected, has been amended herein as an independent claim incorporating all of the limitations of claim 1 (canceled

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herein) and claims 8-14 have been amended to depend from claim 7. Claim 7 as amended herein recites "[a]n isolated nucleic acid comprising a nucleotide sequence encoding a functional ND4 mitochondrial protein, wherein the nucleotide sequence comprises the sequence of SEQ ID NO:1." Independent claim 15 has been amended herein to recite the subject matter of claim 7, i.e., "wherein the nucleotide sequence comprises the sequence of SEQ ID NO:1."

Because Guy and Manfredi et al. do not teach the limitation of "SEQ ID NO:1," claims 7 and 16 (from which all remaining claims depend) are not anticipated by these references. Applicant points to page 14 of the Office Action where the examiner states "[a] sequence search of SEQ ID NO:1 recited in claim 7 of instant application finds the only perfect match of sequences of SEQ ID NO:1 is the disclosure of Applicant's instant application."

Accordingly, withdrawal of these rejections is respectfully requested.

CONCLUSION

The currently pending claims before the examiner are supported throughout the specification and are patentable over the prior art. No new matter has been added. This application is now in full condition for allowance, and such action is respectfully requested.

This response is accompanied by a retroactive petition for a one month extension of time and the required fees. Although Applicant believes that no further extensions of time are required with submission of this paper, Applicant requests that this submission also be considered as a petition for any further extensions of time if necessary. The Commissioner for Patents and Trademarks is hereby authorized to charge the amount due for any extensions of time and any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees paid on the filing or during prosecution of this application to Deposit Account No. 50-0951.

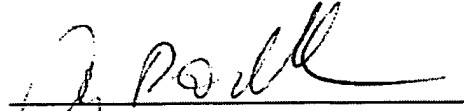
The examiner is cordially invited to call the undersigned if clarification is needed on any matter within this response, or if the examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

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Respectfully submitted,

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Date: February 28, 2008



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Docket No. 5853-324